SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Department of Insurance, Securities and Banking, Petitioner, v. D.C. CHARTERED HEALTH PLAN, INC., Respondent.	Civil Action No.: 2012 CA 008227 2 Judge: Melvin R. Wright Next Event: None Scheduled

THE SPECIAL DEPUTY TO THE REHABILITATOR'S VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE PARTY-IN-INTEREST D.C. HEALTHCARE SYSTEM, INC.'S MOTION FOR (1) A STAY PENDING APPEAL OF THE ORDER APPROVING THE ASSET PURCHASE AGREEMENT, PLAN OF REORGANIZATION AND RELATED MATTERS; AND (2) INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

The District of Columbia and William P. White, Commissioner of the District of Columbia Department of Insurance, Securities and Banking ("Rehabilitator"), by and through his attorneys, the Office of the Attorney General of the District of Columbia, with Daniel L. Watkins, as Special Deputy to the Rehabilitator for D.C. Chartered Health Plan, Inc. ("Chartered"), opposes D.C. Healthcare Systems, Inc.'s ("DCHSI") motion to stay this Court's order of March 1, 2013 approving the Asset Purchase Agreement, Plan of Reorganization, and Related Matters, and for injunctive relief. The Rehabilitator determined that "transformation of [Chartered] is appropriate," precisely as D.C. Official Code § 31-1312(c) contemplates. More pointedly, DCHSI fails to offer the Court any alternative or provide evidence which would allow the Court to grant such extraordinary relief. *Brotherhood of Ry. and S. S. Clerks, Freight*

Handlers, Exp. and Station Emp. v. National Mediation Bd., 374 F.2d 269 (D.C. Cir. 1966); *Barry v. Washington Post Co.*, 529 A.2d 319, 320–21 (D.C.1987); *District of Columbia v. Group Ins. Admin*, 633 A.2d 2, 21 -22 (D.C. 1993).

DCHSI and its shareholder, Jeffrey E. Thompson ("Thompson"), (a) had months to find a solution to Chartered's financial problems (including some of their own creation) and found none; (b) consented to Chartered's being placed in rehabilitation; (c) sat idly by as the Rehabilitator and his team worked creatively and diligently to find a way to preserve some value for Chartered's stakeholders, including the more than 100,000 Medicaid and Alliance Program recipients that Chartered serves in the District; (d) requested and received information along the way; (e) could have sought to intervene to propose alternatives, but chose not to do so; and (f) now, after the Rehabilitator presented the Court with the only viable solution to Chartered's problems, ask that everything, including a contract-award process over which neither the Rehabilitator nor this Court has any control, be put on hold, potentially jeopardizing Chartered's rehabilitation. For these reasons, as elaborated below, the Court should deny DCHSI's motion and let the plan proceed.

STATEMENT OF FACTS[1]

1. Chartered is a District of Columbia HMO that is responsible for providing Medicaid and Alliance Program coverage to over 100,000 citizens in the District. As an HMO, Chartered is regulated by the District of Columbia Department of Insurance, Securities and Banking ("DISB") and subject to the provisions of D.C. Official Code § 31-3851.01 *et seq.*, which, to protect enrollees, medical providers and the public, require HMOs to maintain certain capital levels.

Chartered's Capital Levels Were Substantially Below the Statutory Minimums

2. Chartered's auditor, KPMG, resigned in April 2012.

3. On April 13, 2012, Chartered filed its unaudited 2011 annual statement with DISB. It revealed that: (a) Chartered had sustained an operating loss of $15.0 million in 2011; (b) Chartered's capital and surplus as of December 31, 2011, was just $1.4 million; and (c) Chartered's Risk-Based Capital ("RBC") level was only 10.3%, significantly below the 200% minimum required by D.C. Official Code § 31-3851.01 *et seq.*

4. Pursuant to D.C. law, Chartered's deficient RBC level triggered a Mandatory Control Level Event, requiring DISB Commissioner William White to "take such action as is necessary to place [Chartered] under regulatory control." *See* D.C. Official Code § 31-3851.06.

5. As permitted by D.C. Official Code § 31-3851.06(c), DISB gave Chartered the opportunity to eliminate the Mandatory Control Level Event by, among other things, submitting an RBC plan. In response, Chartered submitted an RBC plan in two installments—on May 5, 2012 and May 29, 2012.

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[1] The Rehabilitator is a statutorily appointed officer of the Court and has duly reported to the Court, in his First and Second Status Reports, concerning the action he has taken. The Rehabilitator wishes to correct some of the misstatements that DCHSI has made and is verifying the factual recitations in this opposition. Other misstatements by DCHSI are irrelevant for present purposes, so the Rehabilitator will not address them.

Chartered Failed to Cure its Capital Deficiency,
So DISB Was Forced to Take Control of Chartered

6. On June 6, 2012, Commissioner White, along with his advisors Daniel Watkins and Faegre Baker Daniels, met with Chartered's CEO and Board of Directors to discuss the RBC plan and Chartered's strategy to cure its capital deficiency.

7. On June 29, 2012, Chartered informed DISB that its parent, DCHSI, was engaged in discussions with several parties who were considering acquiring Chartered.

8. On September 27, 2012, Chartered's new outside auditor, Brown Smith Wallace LLC ("BSW"), provided an audit update to DISB. That update revealed that Chartered's financial condition was worse than expected. Specifically, Chartered's year-end 2011 capital and surplus was at least $3.7 million lower than reported in the April 13, 2012 unaudited financials, such that it was actually negative. The update revealed questionable related-party transactions as well.

9. On October 1, 2012, Chartered informed DISB that its CFO and Controller had been dismissed as a result of matters reported in the updated audit findings.

10. Having provided Chartered over six months to cure its capital deficiency or arrange an acquisition, having learned in the interim that Charter's 2011 financial condition was worse than it had previously understood, and because the Department of Health Care Finance ("DHCF") was threatening to terminate Chartered's Medicaid contract as a result of the matters described in paragraph 8 above, DISB determined that immediate action was necessary to protect enrollees, providers, and the public. Accordingly (a) after consultations with DISB and DHCF, on October 16, 2012, Chartered's Board of Directors adopted a resolution consenting to rehabilitation, as did DCHSI through its sole shareholder Thompson; and (b) on October 19, 2012, DISB filed an Emergency Consent Petition with this Court to appoint a rehabilitator to

take control of Chartered pursuant to D.C. Official Code § 31-1301 *et seq.* *See* DCHSI's Memorandum of Points and Authorities ("DCHSI Memo"), Ex. 4 at 2-3 & Ex. 10 at 3-4. The Court granted the petition that same day. *See* 10/19/12 Rehabilitation Order.

11. The Rehabilitation Order (a) appointed the Commissioner as Rehabilitator of Chartered; (b) authorized the Rehabilitator to take possession of and to administer the assets of Chartered; (c) granted the Commissioner all rights, power, and authority vested by law in a Rehabilitator; and (d) authorized the Commissioner as Rehabilitator to appoint a Special Deputy to exercise such rights, power, and authority. *Id.*

12. On October 19 and confirmed on November 2, 2012, the Commissioner appointed Daniel L. Watkins as Special Deputy and granted him certain powers of the Rehabilitator under the Order of Rehabilitation and D.C. Official Code § 31-1301 *et seq.*

13. Under the Rehabilitation Order and D.C. law, the Rehabilitator had (a) "[a]ll powers of the directors, officers and managers of Chartered, whose authority is suspended except as may be re-delegated by the Rehabilitator;" (b) "[a]uthority to take such action as deemed necessary or appropriate to reform and revitalize Chartered;" and (c) "[a]uthority to take possession and control of Chartered's assets and administer them under the general supervision of the Court." *See* Rehabilitation Order at 2; *see also* D.C. Official Code §§ 31-1311(a) & 31-1312(c).

14. Contrary to DCHSI's contention, the Rehabilitator had no obligation under D.C. law, the Rehabilitation Order, or otherwise to consult with or inform DCHSI or its shareholder, Thompson, before exercising the Rehabilitator's statutory powers, even though the Special Deputy did meet periodically with DCHSI's legal counsel at Gibson Dunn and shared as much

information as he reasonably could share about his activities and Chartered's financial condition as the 2011 audit was completed.

The Special Deputy Exercised His Statutory Authority to Protect Enrollees and Providers, Continue to Provide Care, and Realize Value for Chartered's Shareholder By Negotiating an Asset Purchase Agreement

15. D.C. Official Code § 31-1312 requires the Rehabilitator and in turn his appointed Special Deputy to protect the interests of more than just the equity stakeholder of Chartered as he attempts to rehabilitate/revitalize/reorganize a company. Thus, upon assuming control of Chartered, the Special Deputy sought a solution to the company's troubles that would simultaneously (a) ensure undisrupted care for Chartered's more than 100,000 enrollees; (b) enable Chartered to continue processing claims and making payments to its more than 5,000 healthcare providers and creditors; (c) to the extent practicable, protect the interests of Chartered's approximately 160 employees; and (d) preserve whatever equity value there might be for the benefit of Chartered's shareholder. *See* Special Deputy to the Rehabilitator's First Status Report ("First Status Report") at 2; DCHSI Memo Ex. 10 at 1-2 & 5-6.

16. Fulfilling these objectives was made all the more difficult by the facts that, in addition to Chartered's capital deficiencies:

(a) Chartered's existing contract with the District, which DCHSI concedes is Chartered's sole source of revenue (DCHSI Memo at 2 & Ex. 2, ¶3), was set to expire on April 30, 2013 (First Status Report at 3);

(b) The District's DHCF, an independent agency that is not subject to the control of DISB or the Rehabilitator, was set to request proposals for new Medicaid contracts to commence on May 1, 2013, and, toward that end, had established a December 3, 2012, deadline for bids (*id.*);

(c) DHCF had made it clear that Chartered would not be awarded a new contract unless it (i) had solved its financial problems through new ownership and (ii) was no longer in rehabilitation by mid-January 2013, when DHCF intended to make contract-award recommendations to the District Council (*id.*; DCHSI Memo Ex. 4 at 6);

(d) Indeed, DHCF's Request for Proposals ("RFP") included a section, C.3.1, setting forth the "Minimum Requirements" that any successful bidder had to meet. Among these were the requirements in section C.3.1.6, titled "Authority to Operate." That section specified: "Contractor shall maintain a certificate of Authority to Operate a Health Maintenance Organization in the District of Columbia from the Department of Insurance, Securities and Banking (DISB) and shall remain in compliance with all DISB requirements concerning equity, capitalization, reserves, and insurance coverage throughout the term of the Contract. Contractor shall notify DHCF within one (1) Business Day of Contractor's notification of any actions or investigations by DISB regarding Contractor's compliance with DISB laws, regulations, or policies, including any actions to revoke or limit Contractor's license or Authority to Operate."[2] and on November 28, 2012, DHCF issued a Corrective Action Plan/Non-Compliance letter to Chartered stating that the agency was concerned with the quality and level of certain services provided by Chartered (First Status Report at 3);

(e) On November 28, 2012, DHCF issued a Corrective Action Plan/Non-Compliance letter to Chartered stating that the agency was concerned with the quality and level of certain services provided by Chartered. *Id.*

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[2]As such, Chartered could not meet the "Minimum Requirements" that DHCF set for bidders as of December 3, 2012, when RFP responses were due, and had little or no chance of securing adequate capital through an outright sale of Chartered to a new owner, as noted in the First Status Report at 2-4, let alone of having such a transaction approved by the Court by the scheduled contract-award-determination date of mid-January 2013. DCHSI ignores these certainties while complaining that the Rehabilitator should have submitted a bid on Chartered's behalf. A copy of the relevant portion of DHCF's RFP is attached as Exhibit 1. A complete copy of the RFP can be provided upon request.

17. In addition, adverse publicity and speculation relating to an investigation of Thompson, the questions raised about related-party transactions, federal income tax uncertainties, and the fact that a significant portion of Chartered's remaining assets were illiquid or of uncertain value, combined to dampen even further the interest of potential investors in Chartered. First Status Report at 4. Indeed, Chartered's single largest potential asset was its claim before the District's Contract Appeals Board that DHCF owes Chartered millions of dollars in unpaid premiums. *See* CAB No. D-1445. DHCF has contested this claim, however, making it difficult for investors to value this asset. Additionally, because of the time constraints described above, potential investors had little time to analyze the risks raised by these concerns, to perform due diligence, and to secure necessary financing. *See* First Status Report at 4.

18. Given these challenges, the Special Deputy requested that DHCF extend the existing deadlines for the Medicaid RFP process so that Chartered could have additional time to identify potential investors and provide for a less hurried process for selecting Medicaid providers for new contracts with the District. But DHCF was firm that the deadlines would not be extended and that a new contract would be awarded around February 1 and commence on May 1, 2013.

19. Despite these challenges to the preparation of a plan that would best serve all of Chartered's stakeholders, the Special Deputy met immediately after his appointment with Chartered's CEO, Maynard McAlpin, and other key Chartered executives, outside legal counsel, and representatives from DHCF. Additionally, in early November 2012, in an effort to find a suitor that could recapitalize Chartered and cure its RBC deficiency, the Special Deputy engaged the investment banking firm Keefe, Bruyette & Woods, Inc. ("KBW"). First Status Report at 2.

20. KBW immediately began looking for and communicating with interested investors. KBW's work is summarized in a document titled "D.C. Chartered Process Overview," a true and accurate copy of which is attached to the Declaration of James M. Sheehy, which is attached as Exhibit 2 ("KBW Overview"). As explained at pages 3-5 of that document, KBW had discussions with seventeen (17) potential investors. Of those, thirteen (13) executed a non-disclosure agreement ("NDA") and received a process letter and a copy of Chartered's unaudited 2011 financial statements. First Status Report at 2. The process letter asked potential investors to describe their proposed sources of financing and their expertise in the Medicaid managed-care industry. It also stated that potential investors were expected to have the expertise and resources necessary to help prepare a strong response to DHCF's RFP for a new Medicaid contract by December 3. DCHSI Memo Ex. 6. "Several well capitalized strategic parties declined to participate in the process given the financial and legal condition of Chartered and the compressed timeframe" of the process. KBW Overview at 3-5. Of the thirteen parties that signed a NDA, seven (7) submitted responses to KBW after reviewing Chartered's financial information. *Id.*

21. KBW and the Special Deputy reviewed and evaluated the responses based on each party's financial strength, Medicaid expertise, capability to work quickly with Chartered to submit an RFP response by December 3, ability to finance and close a transaction, and the likelihood that the party would be regarded highly in the RFP process and thus likely to secure a new contract. Starting the week of November 12, 2012, the Special Deputy and KBW had in-person meetings and discussions with three prospects that emerged as the most viable. *Id.* at 5.

22. At the same time that the Special Deputy and KBW were meeting with and evaluating potential investors, Chartered (a) continued to prepare a response to the DHCF RFP

on behalf of Chartered, (b) continued to monitor the RFP process, and (c) submitted questions to clarify issues in the RFP. DCHSI Memo Ex. 9 (Declaration of Daniel L. Watkins).

23. The Special Deputy and KBW identified no investors with significant Medicaid-contracting experience and non-contingent financial capability that were interested in purchasing the company outright. The prospects that did have readily available financial capability and experience in Medicaid contracting either declined to proceed or offered to acquire only certain assets of Chartered. First Status Report at 6.

24. The Special Deputy, in consultation with KBW, Chartered executives, and legal advisors, determined that the best alternative for achieving value for Chartered under the circumstances was to enter into a letter of intent with AmeriHealth Mercy ("AHM"), a leading Managed Care Organization providing healthcare solutions in fourteen (14) states and serving nearly five (5) million members. Accordingly, on November 30 and December 1, 2012, the Special Deputy caused Chartered to enter into a letter of intent, clarifying letter, and Letter Agreement with AHM. Pursuant to the arrangement contemplated by the letter of intent and clarifying letter, Chartered would sell AHM certain of its assets, including Chartered's existing Medicaid contract with DHCF; AHM would work with Chartered to submit a proposal to DHCF for a new Medicaid contract; and AHM or its designated subsidiary would obtain all licenses necessary to do business in the District and have risk based capital of 200%. Pursuant to the Letter Agreement, AHM agreed to pay Chartered $5 million and to provide transition services if AHM or one of its affiliates is awarded a new Medicaid contract and commences operations under the contract. Copies of the letter of intent, clarifying letter, and Letter Agreement are attached as Exhibit 3. *See also* KBW Overview at 5-7; First Status Report at 5.

25. The Special Deputy determined that this course of action was the best alternative available to enable Chartered to realize value for its troubled assets. The bases for the Special Deputy's conclusions were:

(a) AHM was financially secure, had made the best offer of all those that had expressed interest, and had substantial Medicaid experience with a record of success in bidding for Medicaid contracts;

(b) While the one other party that had expressed interest in purchasing Chartered's assets had comparable financial strength and security, only AHM had experience operating a Medicaid HMO;

(c) AHM was the best-prepared party in terms of expertise and resources to participate with Chartered in finalizing a mutually agreed response to the RFP due December 3; and

(d) KBW believed that the proposed transaction with AHM (i) would provide Chartered with reasonable value for the assets in view of Chartered's current condition and prospects, and (ii) was the best option available to Chartered under all the circumstances. *See* First Status Report at 6; Second Status Report at 4-5.

26. As the letter of intent with AHM was negotiated and finalized in the last week of November, Chartered and AHM employees teamed to develop and finalize a response to the RFP that combined AHM's extensive capabilities and experience with Chartered's D.C. employees and provider network. In consulting with Chartered executives, KBW, and the Rehabilitator, the Special Deputy determined that a bid submitted in Chartered's name would fare poorly under the RFP evaluation criteria and scoring for multiple reasons, not the least of which was the fact that Chartered was not going to be recapitalized and financially qualified to contract with DHCF. A

joint response by Chartered with AHM posed the same problems in the RFP evaluation and qualification process. First Status Report at 3 & 5-6; DCHSI Memo Ex. 4; RFP (attached as Exhibit 1) at 44.

27. In considering all of the factors involved, the Special Deputy, in consultation with his legal and financial team, determined that the best opportunity for achieving success in the RFP process, realizing value for Chartered's assets, and providing a non-disruptive solution for Chartered's enrollees, providers, and employees, was for AHM to submit the RFP response utilizing Chartered's personnel and assets. First Status Report at 5.

28. Accordingly, the Special Deputy communicated these considerations to AHM, and the jointly prepared RFP response was finalized from November 30 through December 2 and submitted by AHM to DHCF on December 3, 2012.

29. The Special Deputy issued to the media a statement and answers to questions on December 3, 2012 ("Statement") regarding the status of Chartered's 2011 audit and the decision not to submit a response to the RFP on behalf of Chartered itself, published the Statement on the DISB's website, and provided a copy to DCHSI's counsel. The Statement also noted that Chartered had signed a letter of intent with AHM for the sale of certain assets. A true and accurate copy of the Statement is attached as Ex. 8 to DCHSI's Memo.

The Special Deputy Negotiated an Asset Purchase Agreement that Serves the Interests of All of Chartered's Stakeholders

30. Immediately after executing the letter of intent on December 1, Chartered, AHM, and their respective legal counsel and advisors began negotiating the definitive Asset Purchase Agreement ("APA"). The parties and their representatives negotiated at arm's length, with each side vigorously seeking terms that would serve that party's interests. *See* Second Status Report at 4.

31. The Special Deputy submitted a true and accurate copy of the APA to the Court on February 22, 2013. Here are its key elements:

(a) AHM will capitalize a newly formed entity called AmeriHealth District of Columbia, Inc. ("AmeriHealth") that will purchase certain assets from Chartered. AmeriHealth's capitalization is expected to be in excess of $30 million, which would comply with the RBC requirements for HMOs set forth in D.C. Official Code § 31-3851.01 *et seq.*

(b) Rather than acquire all of Chartered's common stock, AmeriHealth will acquire only certain assets and liabilities of Chartered. The remaining assets and liabilities will remain with Chartered. These include in particular: (i) Chartered's claim against DHCF for $60 million in retrospective premiums, (ii) approximately $14 million in assets that are pledged to Cardinal Bank pursuant to a loan transaction with DCHSI, and (iii) Chartered's claims against third parties, including potential claims against DCHSI and Thompson for breach of fiduciary duty and conversion. Chartered remains responsible for provider claims incurred prior to AmeriHealth's anticipated assumption of Chartered's Medicaid contract.

(c) AmeriHealth's obligation to close the transaction is subject to the closing conditions in Sections 7.01 and 7.02 of the APA, including among other things that: (i) the Court shall have approved the APA and Plan of Reorganization; (ii) DHCF shall have notified AmeriHealth that AmeriHealth has been approved as a managed care provider pursuant to DHCF's RFP process and been allocated the enrollees currently covered by Chartered under its existing Medicaid contract; (iii) AmeriHealth shall be satisfied with the arrangements made for paying provider claims incurred prior to AmeriHealth's anticipated assumption of Chartered's existing Medicaid contract; (iv) DHCF shall have approved the transfer to AmeriHealth of Chartered's existing Medicaid contract and enrollees; and (v) AmeriHealth shall have been

granted a health maintenance organization license by DISB pursuant to D.C. Official Code § 31-3403.

(d) AmeriHealth and Chartered will work together to accomplish a smooth transition for enrollees, providers, employees, and others before the existing Medicaid contract comes to an end.

(e) AmeriHealth will pay Chartered $5 million for the acquired assets, including Chartered's name, other intellectual property, the existing Medicaid contract, and Chartered's provider agreements. AmeriHealth will also provide post-closing transition services at no cost to Chartered, including personnel and management services to assist Chartered in the management, administration, servicing and run-off of liabilities arising out of or relating to ownership or operation of Chartered's business in the period prior to the effective date of the transaction, including claims of health care providers for services rendered in that period.

32. On January 10, 2013, Chartered filed an independently audited December 31, 2011, statutory financial statement with DISB. The statutory annual statement shows that Chartered experienced a loss of $9.4 million in 2011 and ended the year with $5.9 million in capital and surplus. These financial results are somewhat stronger than reported in April 2012, only because they include a net $20 million[3] retrospective premium receivable that had not been recorded as an asset in the unaudited statement filed in April 2012. This amount represents the estimated net value of Chartered's receivable for a premium claim under the existing Medicaid contract at December 31, 2011. The audited statement also recognizes that certain related-party balances previously recorded as assets do not qualify for inclusion in Chartered's financial statement under D.C. law. *See* First Status Report at 6-7.

[3] To comply with statutory accounting rules, the retrospective premium receivable has been booked at less than the full amount (67%) of the claims against the DHCF. The claims could be more, or considerably less, than the amount included in Chartered's financial statements.

33. On February 21, 2013, Chartered filed September 30, 2012, statutory financial statements with DISB. Capital and surplus remained positive at $9 million, but again, that includes a retrospective premium receivable now booked at an increased amount of $32 million, as well as the roughly $14 million in illiquid assets pledged with Cardinal Bank. Cash was reduced by $7 million and claims liability increased by $4 million, which amounts to an $11 million loss absent the $12 million in retrospective premium receivable booked in the September 30, 2012, financial statement. *See* Second Status Report at 2.

ARGUMENT

A. Standard for Motion for Stay.

"To prevail on a motion for stay, a movant must show that he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay." *Akassy v. William Penn Apartments, Ltd. P'ship*, 891 A.2d 291, 309 (D.C. 2006) (quoting *Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987)) (other citation omitted). "A stay pending appeal is always an extraordinary remedy, and it is no less so when extraordinary jurisdiction must be asserted as a prerequisite." *Brotherhood of Ry. and S. S. Clerks, Freight Handlers, Exp. and Station Emp. v. National Mediation Bd.*, 374 F.2d 269 (D.C. Cir. 1966); *See also District of Columbia v. Group Ins. Admin.* 633 A.2d 2, 21 -22 (D.C. 1993)

The foregoing facts make clear (a) that DCHSI cannot succeed on the merits; (b) that the injury of which DCHSI complains that Chartered will not be awarded a Medicaid contract on its own would have occurred no matter what, because Chartered could not qualify for a contract award; (c) all stakeholders would be harmed if the Rehabilitator's plan is not allowed to go forward; and (d) for all those reasons, the public interest favors denying rather than granting a stay.

B. By Negotiating an APA that Serves the Best Interests of All of Chartered's Stakeholders, the Special Deputy Properly Exercised His Statutory Authority.

DCHSI's motion to stay is an attempt by Mr. Thompson to put his own interests ahead of those of Chartered's 100,000 enrollees, 160 employees, and 5,000 providers. DCHSI has an interest in this proceeding as Chartered's shareholder, but that interest is subordinate to the interests of all other stakeholders.[4] The Rehabilitator and his Special Deputy were charged with putting together a Plan of Reorganization that is fair and equitable to all of Chartered's constituents, and the Court concluded that they had done so. Transcript of March 1, 2013 Hearing (Transcript) pp. 36-37.

D.C. law and the Rehabilitation Order grant the Rehabilitator broad "[a]uthority to take possession and control of Chartered's assets and administer them under the general supervision of the Court." Rehabilitation Order at 2; *see also* D.C. Official Code § 31-1311(a). The Rehabilitator has "[a]ll powers of the directors, officers and managers of Chartered, whose authority is suspended except as may be re-delegated by the Rehabilitator." Rehabilitation Order at 2; *see also* D.C. Official Code § 31-1312(c). He also has "[a]uthority to take such action as deemed necessary or appropriate to reform and revitalize Chartered." Rehabilitation Order at 2; *see also* D.C. Official Code § 31-1312(c).

As other courts have recognized, a "rehabilitator is granted authority to make judgments and take actions he believes to be in the public interest. The trial court's primary role is a supervisory one and *the standard of the court's review of the rehabilitator's actions is one of abuse of discretion.*" *Kentucky Central Life Insurance Company v. Stephens*, 897 S.W.2d 583, 587-88 (Ky. 1995) (emphasis added).

[4] DCHSI and Thompson have a lower priority than all of Chartered's other claimants, and they are not entitled to *any* recovery until they pay Chartered the millions they owe it. D.C. Official Code §§ 31-1340 and 31-3420.

As explained in *Kueckelhan v. Federal Old Line Ins. Co. (Mutual),* 444 P.2d 667, 674 (Wash. 1968):

> The primary duty impressed by the statute upon the Commissioner in a rehabilitation proceeding is to correct or remove the causes and conditions which have made the rehabilitation proceeding necessary and, if possible, to conserve and restore the company to a viable status for the benefit of policyholders [or in this case enrollees]. Toward this end he must be afforded that freedom of action in the overall management of the company which will permit him to knowledgeably evaluate, plan, devise, and implement a program which in his best judgment and in keeping with his expertise in the field of insurance will accomplish the objective of the proceeding. And this must be done within and according to the managerial and operational guidelines and requirements set forth in the Insurance Code. As the program of rehabilitation takes form and the steps unfold, the trial court in its supervisory and reviewing role may not substitute its judgment for that of the Commissioner, but may and should only intervene or restrain when it is made to appear that the Commissioner is manifestly abusing the authority and discretion vested in him and/or is embarking upon a capricious, untenable or unlawful course.

Rehabilitation plans may take a variety of forms, and may result in the insurer's continuing its business itself, transferring the business to another, or doing whatever else the Rehabilitator and supervising Court deem appropriate under the circumstances at issue. The point is that a Rehabilitator needs, and has, great flexibility to do his or her job. As the Couch treatise explains:

> In general, the rehabilitation statutes place upon the conservator the responsibility of devising a plan for rehabilitation that will result in the successful continuation of the business of the insurer. Such plans may result in (1) the continuation of the business by the identical insurer, or by a new insurer to be formed to assume the assets of the old insurer, or (2) the execution of a trust indenture which will establish an orderly mechanism for the presentation and enforcement of common claims against the insurer.

Couch on Insurance (3rd ed.) § 5:24 (Rehabilitation Plans, generally); *see also, Koken v. Fidelity Mutual Life Insurance Company*, 907 A.2d 1149, 1156 (Pa. Commw. Ct. 2006) (approving rehabilitation plan that contemplated a possible sale of FML's insurance business to an assuming insurer for cash, after which FML would eventually be dissolved); *In the Matter of Rehabilitation of American Investors Assurance Company,* 521 P.2d 560, 561-63 (Utah 1974)

(affirming the trial court's upholding the rehabilitator's recommendation to transfer insurer's assets to a new company, despite shareholder's objection that the practical effect of the rehabilitation plan was to liquidate the company and nullify the equity interest of its shareholders).

Here, the Special Deputy acted within his statutory authority in negotiating the transaction with AmeriHealth and recommending the Plan of Reorganization. Given the significant legal, financial and timing challenges facing Chartered – all of which are spelled out above and in the Special Deputy's First and Second Status Reports – he achieved the best result possible under the circumstances: a continuation of Chartered's business by a newly formed company, AmeriHealth District of Columbia.

DCHSI's contention that the Rehabilitator was required to seek a liquidation order to achieve this result is simply wrong. The only circumstance in which a rehabilitator is required to file a petition for liquidation under D.C. law is when "payment of policy obligations [has been] suspended in substantial part for a period of 6 months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under § 31-1312(e)...." D.C. Official Code § 31-1314(b). That circumstance is not present here.

What DCHSI is really saying is that the plan that the Rehabilitator has proposed does not rehabilitate Chartered the way DCHSI wanted, starting with the Rehabilitator's failure to submit a bid on behalf of Chartered for a new Medicaid contract. The short answer to that charge, again, is that Chartered could not meet the minimum requirements necessary to win a contract because of the financial deficiencies that DCHSI had tried for months to address, without success. So there was no point in submitting a bid on behalf of Chartered alone. DHCF and the RFP requirements said so. The longer answer lies in the applicable statute. D.C. Official Code

§ 31-1312(e) provides:

> *If the rehabilitator determines that* reorganization, consolidation, conversion, reinsurance, merger, or *other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect the changes.* Upon application of the rehabilitator for approval of the plan, and after any notice and hearings the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan.

(Emphasis added.) The plan that the Rehabilitator devised for Chartered, and that the Court has analyzed and decided to approve, is one that transforms Chartered. Admittedly, the Medicaid contract that was Chartered's sole source of revenue is being transferred along with other (but not all) of Chartered's assets; but that is because Chartered was set to lose that contract when it expired, as it was going to be unable under the express terms of the RFP to qualify for a new contract going forward.

Had Chartered not been able to team with a partner that qualifies to receive a new Medicaid contract, then Chartered would almost certainly have been liquidated. As it is, however, Chartered will continue to exist, albeit in a substantially different form, for however long it is financially able to do so. And Chartered will retain what DCHSI claims are two assets that have great value: (1) its claim against DHCF for $60 million in retrospective premiums, and (2) the $14 million in assets that DCHSI/Thompson caused Chartered to pledge as security for a loan to DCHSI. In other words, Chartered is not being liquidated.

In this connection, DCHSI makes inconsistent arguments. On the one hand, it argues that Chartered "is left as a shell, and there is no basis on which to determine fair value." DCHSI Memo at 20 n.8. On the other hand, it insists that Chartered "would have more capital than is required if only the District would pay what DHCF owes Chartered" (*id.* at 4) and that "[i]f, as it appears, Chartered has shareholder equity of $37 million..., Chartered's capitalization is at least

equal to what it has been throughout its continuous renewals of the DHCF Contract." *Id.* at 19. The Rehabilitator's plan leaves $60 million in claims with Chartered. So if, as DCHSI insists, those claims have great value, then that value could still benefit DCHSI as Chartered's shareholder. The problem for rehabilitation purposes, however, is that – as this Court observed during the March 1 hearing – no part of that $60 million is available to pay providers right now. And right now is when Chartered needs solid capital to enable it to pay provider claims and bid on a new contract.

Recognizing that a claim is not cash, the Rehabilitator did the only thing he could do to preserve both (a) that claim, and (b) Chartered's ability, in a transformed state, to continue serving its 100,000 Medicaid enrollees after its current contract expires.

In sum, the Rehabilitator's plan does transform Chartered, but it does not liquidate it. The Special Deputy has properly exercised his statutory authority and professional judgment in negotiating a deal that serves the bests interests of Chartered's stakeholders. That the equity shareholder, who had every opportunity to come up with an alternative solution but could not find one, does not like the Special Deputy's solution does not provide a basis in law or equity for the Court to stay consummation of the transaction.

C. The Rehabilitator Had No Obligation To Continue To Attempt To Operate Chartered Independently.

DCHSI also accuses the Rehabilitator of not making a good faith effort to fix Chartered's problems before negotiating the deal with AmeriHealth. Coming as it does from a party that (a) tried for months to find a suitor or otherwise to shore up its subsidiary's balance sheet, without success, and (b) breached contractual and common law duties to the subsidiary and thereby exacerbated the problems that forced Chartered into rehabilitation, this charge rings hollow. The Rehabilitator agreed to a sale of Chartered's assets only after concluding that a recapitalization or

sale of the company was not possible. The Special Deputy's First and Second Status Reports lay out the reasons for that conclusion, some of which are directly attributable to the actions of DCHSI and its sole shareholder Thompson. DCHSI and Thompson had six months to put together a deal for Chartered and failed to do so. In contrast, the Rehabilitator had just six weeks to find a solution. That DCHSI and Thompson do not approve of the Rehabilitator's course of action is no surprise; but neither is it a reason to put the deal on hold and jeopardize Chartered's rehabilitation.

To bolster its argument that the Rehabilitator did not try hard enough to fix Chartered, DCHSI relies heavily on *Consedine v. Penn Treaty Network America Insurance Co.,* 2012 WL 6721078 (Pa. Commw. Ct. May 3, 2012). But that case, which is on appeal to the Pennsylvania Supreme Court, is inapposite. In *Consedine,* the receivership court concluded that Penn Treaty's rehabilitator should spend more time trying to develop and implement a rehabilitation plan because there was no immediate cash flow crisis, as Penn Treaty had enough liquid assets to pay claims until at least 2020. In reaching that conclusion, the court recognized that when "an insolvent insurer's immediate financial circumstances are in such disarray that they are completely unsalvageable," continued rehabilitation efforts are unnecessary. *Id.* at *70. Given Chartered's financial and legal circumstances, the Rehabilitator had to take immediate action to avoid leaving Chartered in an unsalvageable position. Almost all of Chartered's assets are illiquid or otherwise unavailable to pay claims. Once Chartered stops receiving monthly payments under its Medicaid contract, its cash-flow predicament will be severe and, with no other source of revenue, probably insoluble. Because Chartered's financial condition made it impossible for the company to continue to operate independently, the Special Deputy acted

properly and responsibly by negotiating a transaction that serves the bests interests of Chartered's enrollees, providers, and shareholder, and of the public.

D. The Rehabilitator Did Not Usurp the Authority of the Court or DCHSI.

DCHSI also argues that the Rehabilitator sought to usurp the authority of the Court by negotiating the deal with AmeriHealth. This argument has no merit. The Rehabilitator kept the Court apprised as often and as fully as he reasonably was able given the circumstances described above. The Rehabilitator filed two status reports to keep the Court apprised of his activities. The Rehabilitator recommended, and the Court has approved, the Asset Purchase Agreement with AmeriHealth and the Plan of Reorganization for Chartered.

DCHSI's assertion that Chartered's articles of incorporation give DCHSI veto authority over the Rehabilitator's decisions reveals a fundamental misunderstanding of how insurance rehabilitations work. Indeed, the argument that "although the Rehabilitator has the board's powers, any exercise of those powers is ineffective unless and until approved by DCHSI" is practically self-rebutting. DCHSI Memo at 13. By that logic, an insurer with a parent and a comparable provision in its articles could thwart any State's insurance-regulatory regime by refusing to approve action that did not protect the shareholder even at the expense of policyholders, creditors, and the public. Insurance law could not function that way.

D.C. law and the Rehabilitation Order granted the Rehabilitator "[a]uthority to take possession and control of Chartered's assets and administer them under the general supervision of the Court." Rehabilitation Order at 2; *see also* D.C. Official Code § 31-1311(a). The Rehabilitator was not required to secure DCHSI's permission before taking action. Such a requirement would have been inconsistent with the authority granted the Rehabilitator by D.C. law and the Court's own order. DCHSI and Thompson may have rendered Chartered's board of directors irrelevant by virtue of the company's articles of incorporation, but that doesn't mean the

Rehabilitator must serve as their puppet too. Indeed, for the Rehabilitator to defer to DCHSI's judgment would be to abdicate responsibility in favor of the party that helped put Chartered in its current situation.

D.C. law and the Rehabilitation Order require DCHSI and Thompson to cooperate with the Rehabilitator, not the other way around. D.C. Official Code § 31-1305; Rehabilitation Order at 3. Among other things, DCHSI and Thompson are required "(1) [t]o reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) [t]o make available to the Commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his possession, custody, or control." D.C. Official Code § 31-1305. They have failed to do so in connection with the Rehabilitator's efforts to collect not only information and documentation, but also millions of dollars they owe Chartered, all as reflected in the Special Deputy's First and Second Status Reports.

E. This Court Cannot Stay the Bid Process, and DCHSI Would Not Be Entitled to Such Extraordinary Relief if the Court Determined It Had the Power and the Inclination to Grant it.

At the hearing on March 1, DCHSI told the Court that it was "going to ask the Court to enjoin, call a time out in effect, on both contracts"—that is, the expiring Medicaid contract, and the proposed contract with AHM. Transcript p. 30. The Court asked, "If the contract expires, what authority do I have [to do that] if the contract expires?" *Id.* DCHSI responded that it would provide the Court with the case law but it has not done so. It does cite authority for the proposition that a court may enjoin award of a government contract if there is proof that the bid process was tainted. DCHSI Memo. at 31. But DCHSI has provided no authority for its assertion that "this Court has the power—either through an appeal or through injunctive relief in

this proceeding—to provide a remedy to DCHSI . . . by *extending the current contract* and reopening the bidding process on the DHCF Contract." *Id.* at 17 (emphasis added).

(1) DHCF and OCP control the bid process

In requesting that the Court stay the bid process, DCHSI conflates the powers and responsibilities of DHCF and DISB. DHCF, formerly the Medical Assistance Administration under the Department of Health, is the Medicaid agency responsible for administering the District's State Plan under title XIX of the Social Security Act Medical Assistance Program. The mission of DHCF is to improve health outcomes by providing access to comprehensive, cost-effective and quality healthcare services for residents of the District of Columbia. Toward that end, it contracts with HMOs like Chartered that, in exchange for premium payments from DHCF, agree to provide healthcare services to D.C. citizens. Critically, pursuant to D.C. Official Code §§ 7-701.01 *et seq.* and 2-352.01 *et seq.*, DHCF, in concert with the Office of Contracting and Procurement ("OCP"), is the District agency responsible for soliciting bids, organizing the selection process, and ultimately recommending to whom such Medicaid contracts should be awarded.

DISB, by contrast, regulates financial-service businesses in the District by administering the District's insurance, securities, and banking laws, rules and regulations. DISB oversees a broad range of financial services businesses including insurance companies, insurance producers (agents), HMOs, captive insurance companies, risk retention groups, investment advisers, broker-dealers, securities issuers, agents of issuers, banks, mortgage lenders and brokers, check cashers, money transmitters, consumer-sales-finance companies, money lenders and consumer-credit-service organizations. DISB's primary goal is to ensure that residents of the District have access to a wide choice of insurance, securities, and banking products and services, and that they

are treated fairly by the companies and individuals that provide these services. DISB has no authority to regulate the contract bidding process or to chose to whom District Medicaid contracts should be awarded.

In short, the parties that DCHSI seeks to enjoin—DHCF and OCP—are not before the Court.

(2) DCHSI would not be entitled to equitable relief in any event

A party that seeks equitable relief must pursue its rights with dispatch and come to court with clean hands. As the Supreme Court has explained, "equity aids the vigilant and not those who slumber on their rights." *Colorado v. Kansas*, 514 U.S. 673, 687 (1995) (stating that equitable claims, including *laches*, are barred if a party has not diligently pursued its rights and this lack of diligence has prejudiced the other party). In addition, "he who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Auto Maint. Mach. Co.*, 324 U.S. 806, 815 (1945). "This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief" because equity refuses to be "the abettor of iniquity." *Id.* "Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public." *Id.*

Application of these principles here mandates denial of DCHSI/Thompson's motion. First, the root of DCHSI's claim is that "[t]he Rehabilitator's refusal to permit Chartered to bid on the DHCF Contract necessarily means the contract would be awarded to entities other than Chartered, threatening Chartered's very existence and, by extension, DCHSI." DCHSI Memo at

33. For that reason, DCHSI argues, it has no adequate remedy at law and must have an injunction to reopen the bidding process.

Even if DCHSI had legitimate grounds for opposing the rehabilitation plan, and the Rehabilitator contends that it does not, DCHSI has waited far too long to raise them. The Special Deputy announced publicly on December 3, 2012, that he was not submitting a response to the RFP on behalf of Chartered and explained the reasons why. *See* DCHSI Memo, Ex. 8. A copy of this Statement was provided to DCHSI's counsel. *See* ¶ 29 in the Statement of Facts above. DCHSI acknowledged at the March 1, 2013, hearing that "we certainly were aware after they announced publicly December 3rd that they weren't bidding on the contract." Transcript p. 24. That means that DCHSI knew on December 3 that the irreparable harm of which DCHSI now complains was, to borrow DCHSI's characterization, "necessarily" going to occur because "the contract would be awarded to entities other than Chartered, threatening Chartered's very existence." DCHSI Memo at 33. Yet DCHSI sat on that information for 2½ months while the Rehabilitator, his counsel, and his advisors worked diligently to complete negotiations with AHM, seeking to ensure that Chartered's enrollees would continue to receive medical services from a financially secure HMO.

DCHSI explained at the March 1 hearing that it did go to the Contract Appeals Board "to complain . . . that the process was collusive and unfair." Transcript at 24. As discussed below, that complaint was dismissed. But what DCHSI has not explained, and perhaps cannot, is why DCHSI did not timely move to intervene in this Court and challenge the Rehabilitator's decision not to submit a bid on behalf of Chartered when it learned that information on December 3. D.C. law gives the Court exclusive jurisdiction to entertain, hear or determine any complaint seeking any relief relating to this rehabilitation proceeding. D.C. Official Code § 31-1303(a), (b) & (e).

Furthermore, the Rehabilitation Order clearly states that the Court "retains jurisdiction in this matter during Chartered's rehabilitation, and for purposes of granting such other and further relief as this cause and the interest of the policyholders, creditors, or the public may require." Rehabilitation Order at 3. *See also* D.C. Official Code § 31-1312(c).

Having failed to timely intervene, DCHSI is barred by laches from challenging the Rehabilitator's plan now that DISB, the Rehabilitator, Chartered, and AHM expended substantial efforts and resources pursuing that plan. DCHSI's complaint that the Rehabilitator did not provide all the documents and information that DCHSI wanted as soon as DCHSI wanted them has little merit. As the Court asked on March 1: "So if they didn't provide it voluntarily, why didn't you file a request of the Court to compel them to provide you with the information?" Transcript p. 29 DCHSI's response was, "We could have but . . . it's one of these . . . situations where a judgment call is made." *Id.*

Finally, DCHSI does not come to this Court with clean hands. To the contrary, and to cite just one example, DCHSI has owed Chartered nearly $4 million under a Tax Allocation Agreement since at least 2010. Given that Chartered is in rehabilitation for the very reason that its capital is deficient, DCHSI's contribution to that circumstance makes it ill-suited to seek equitable relief on the ground that *others'* actions are "threatening Chartered's very existence and, by extension, DCHSI." DCHSI Memo at 33.

In summary, DCHSI's motion is barred by *laches* and DCHSI's unclean hands.

(3) DCHSI's Bid Challenge was denied by the Contract Appeals Board.

Rather than intervene in this proceeding to challenge the Special Deputy's not submitting an RFP response on Chartered's behalf, and ignoring the fact that the Office of the Attorney General ("OAG") vetted the hiring of the Special Deputy, DCHSI filed an *ad hominem* attack on the Special Deputy and Faegre Baker Daniels ("FBD") with the Contract Appeals Board

("CAB"). DCHSI's CAB action alleged that the process was tainted by collusive bidding and ethics violations that deprived Chartered of an opportunity to bid. The CAB has dismissed DCHSI's action on jurisdictional grounds without having to address the merits. DCHSI Memo Ex. 14. Importantly, the CAB rejected DCHSI's contention that actions of one District official, here, the Rehabilitator, must necessarily "be ascribed to the District as a whole." *Id.* at 4. The CAB concluded that "there is no evidence of an ongoing communication line between DISB and its agents and OCP and DHCF that would require that the Board impute any knowledge to OCP and DHCF regarding the Rehabilitator's conduct in managing Chartered, or to find that collusion occurred between these agencies that tainted the protested Solicitation." *Id.* As such, even if there were some basis for DCHSI's charges of "conflict and collusion," that would not establish that DHCF acted improperly in relation to the contract procurement. *See id.* at 4 n.2. This finding by the CAB completely refutes DCHSI's argument that there is some basis to enjoin the procurement process itself.

DCHSI's Memorandum repeats these "conflict and collusion" charges against the Special Deputy and FBD, although (a) it offers no evidentiary support for them and (b) DCHSI's counsel admitted at the March 1 hearing that he was not comfortable even repeating the charges against FBD. The Special Deputy explained to the Court on March 1 that: (i) he fully disclosed at the outset the fact that one of his thirteen (13) siblings was formerly Chartered's CFO, (ii) that relationship does not affect the Special Deputy's ability to perform his duties responsibly and in good faith, and (iii) DISB consulted the OAG when the issue first arose 10 months ago. Transcript pp. 27 and 34.

As for the suggestion that FBD is conflicted, it is false. FBD has not represented AHM or UnitedHealth in connection with the RFP process or any other matter related to Chartered's

rehabilitation. FBD also disclosed to Commissioner White that it represents UnitedHealth and AHM in unrelated matters, and Commissioner White consented to the firm's proceeding in this one. The suggestion that FBD has not fulfilled its duty of undivided loyalty to the Commissioner is as offensive as it is wrong.[5]

The time to challenge the Special Deputy's decision not to submit a bid for Chartered was in December, and the way to make the challenge was to ask this Court to address the merits of that decision, not to level *ad hominem* attacks at those who made it.

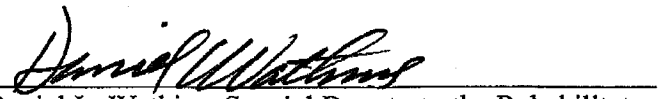
CONCLUSION

For all of the foregoing reasons, the Court should deny DCHSI's motion.

[5] At the March 1 hearing, the Court asked what would be the point of looking into DCHSI's charges of "collusion" and "conflicts" in the bid process even if there were some basis for them (which there is not): "[D]oesn't there have to be some prima facie showing on financial solvency before we even get into those issues?" Transcript pp. 46-47. DCHSI's response was to point to the claim against DHCF for retrospective premiums. Such claims are not cash.

VERIFICATION

I verify under penalty of perjury that the facts set forth in numbered paragraphs 1 through 33 in the Statement of Facts set forth above are true.



Daniel L. Watkins, Special Deputy to the Rehabilitator

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2013, a copy of the foregoing was filed and served by email upon:

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EXHIBIT 1

DHCF-2013-R-0003

REQUEST FOR PROPOSALS (RFP)
FOR MANAGED CARE ORGANIZATIONS

C.2 RESERVED

C.3 Basic Organizational and Structural Requirements

C.3.1 Minimum Requirements

Contractor shall have a well-defined organizational structure with clearly assigned and documented responsibility and accountability for the efficient and effective management of a Managed Care Organization operating in the District. At a minimum, Contractor shall:

C.3.1.1 Perform in accordance with federal regulatory standards applicable to Medicaid MCOs, including but not limited to 42 C.F.R. § 438 et seq.

C.3.1.2 Submit complete, timely, and accurate patient encounter data from all participating network and non-participating network Providers, as well as complete data regarding utilization of prescription drugs and services and benefits covered.

C.3.1.3 Comply with the District of Columbia Medical Assistance State Plan including amendments, any waivers (as described in Sections 1115 and 1915 of the Social Security) approved by CMS, and relevant MCO and District of Columbia insurance requirements, incorporated herein by reference.

C.3.1.4 Satisfy the specifications and standards set forth in Section C and Section H, including the ability to comply with all requirements related to External Quality Review.

C.3.1.5 Have the capacity to expand its Provider Network and administrative capabilities to serve the maximum number (or a majority of the maximum number) of potential Enrollees as defined in Section B.2.2 (185,000).

C.3.1.6 Authority to Operate Contractor shall maintain a certificate of Authority to Operate a Health Maintenance Organization in the District of Columbia from the Department of Insurance, Securities and Banking (DISB) and shall remain in compliance with all DISB requirements concerning equity, capitalization, reserves, and insurance coverage throughout the term of the Contract. Contractor shall notify DHCF within one (1) Business Day of Contractor's notification of any actions or investigations by DISB regarding Contractor's compliance with DISB laws, regulations, or policies, including any actions to revoke or limit Contractor's license or Authority to Operate.

C.3.1.7 Ineligible Organizations

In accordance with SSA 1902(a): The District shall exclude any specified individual or entity from participation in the program under the State Plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128 or section 1128A, terminate the participation of any individual or entity in such program if (subject to such exceptions as are permitted with respect to exclusion under sections 1128(c)(3)(B) and 1128(d)(3)(B)) participation of such individual or entity is terminated under title XVIII or any other State plan under this title,] and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period.

EXHIBIT 2

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
Department of Insurance, Securities and Banking,

Petitioner,

v.

D.C. CHARTERED HEALTH PLAN, INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2
Judge: Melvin R. Wright

DECLARATION OF JAMES M. SHEEHY

I, James M. Sheehy, declare under penalty of perjury that the following facts are true:

1. I am a Principal of Keefe, Bruyette & Woods, Inc. ("KBW"). I have personal knowledge of the facts stated in this Declaration.

2. KBW, along with the Rehabilitator of D.C. Chartered Health Plan, Inc. ("Chartered"), Daniel L. Watkins, Special Deputy Rehabilitator, and Faegre Baker Daniels LLP, the Rehabilitator's counsel (collectively, the "Transaction Team"), led a process commencing in late October 2012 to identify a partner willing to purchase and recapitalize Chartered. I acted on behalf of KBW throughout that process.

3. I created a document titled "DC Chartered Process Overview" that fairly and accurately summarizes the process and the work that the Transaction Team did in connection with it. A true and accurate copy of that document is attached hereto.

4. If called as a witness in this proceeding, I could and would testify to each of the facts set forth in the attached document.

James M. Sheehy

DC Chartered Process Overview

February 2013

KEEFE, BRUYETTE & WOODS

General Information and Limitations

This presentation has been prepared by Keefe, Bruyette & Woods, Inc. ("KBW") based on information prepared and supplied by D.C. Chartered Health Plan, Inc., the Rehabilitator, the Special Deputy Rehabilitator or publicly available information, the accuracy of which has not been independently verified, and cannot be assured by, KBW. In addition, many of the projections and financial analyses herein are based on estimated financial performance prepared by or in consultation with the recipient and are intended only to suggest a reasonable range of results for discussion purposes. This presentation is incomplete without the oral or video presentation that supplements it.

Neither KBW nor any other party makes any representation or warranty regarding the information contained herein and no party may rely on such information, and KBW expressly disclaims any and all liability relating to or resulting from recipient's use of these materials. The information, data and analyses contained herein are current only as of the date(s) indicated, and KBW has no intention, obligation or duty to update these materials after such date(s). This information should not be construed as, and KBW is not undertaking to provide, any advice relating to legal, regulatory, accounting or tax matters.

KBW, a U.S. registered broker-dealer and a member of the Financial Industry Regulatory Authority, is a full service investment bank specializing in the financial services industry. KBW and Stifel, Nicolaus & Company, Incorporated ("Stifel") are affiliated broker-dealer subsidiaries of Stifel Financial Corp. ("Stifel Financial").

DC Chartered Process Overview

Summary

- Keefe, Bruyette & Woods ("KBW"), along with the Rehabilitator of D.C. Chartered Health Plan, Inc. ("Chartered" or the "Company"), Daniel Watkins, Special Deputy Rehabilitator, and Faegre Baker Daniels LLP, the Rehabilitator's counsel (collectively, the "Transaction Team") , led a process commencing in late October 2012 to identify a partner willing to purchase and recapitalize Chartered (the "Process")
- The Process is summarized below and further described in the following pages:

Summary of Process

1 Diligence / Marketing Preparation	2 Contact Potential Partners / Receipt & Evaluation of Process Letter Responses	3 Additional Due Diligence by Selected Parties / Final Proposal Terms	4 Selection of AmeriHealth / Negotiation and Signing of APA
Late October 2012	**Early / Mid November 2012**	**Mid / Late November 2012**	**December 2012 – February 2013**
• Emergency Consent Order of Rehabilitation was entered by the Court on October 19, 2012 • Transaction Team due diligence of Chartered and organizational meetings • Preparation of non-disclosure agreements ("NDA"), process letter and unaudited draft financials • Review of potential partners, including previous discussions with Chartered	• Contacted / held initial discussions with potential partners • Distribution of NDA and process letter to interested parties • Preparation of the virtual data room • Review of process letter responses	• Three parties selected to perform additional due diligence, which included: o On-site meeting with the Company and the Transaction Team o Access to the virtual data room o Access to follow up discussions and meetings with management • Receipt / evaluation of final proposal terms	• Entered into letter of intent agreement with AmeriHealth on December 1, 2012 • Assisted with AmeriHealth's RFP response, which was submitted prior to December 3, 2012 deadline • Negotiation of the Asset Purchase Agreement ("APA") • Signing of APA on February 8, 2013

DC Chartered Process Overview

Challenges to the Process

- The Transaction Team faced significant challenges in its search for a partner, including:
  - Chartered required a new Medicaid contract (the existing contract expires April 30, 2013) with the District to be a viable acquisition candidate
  - Bids for the new Medicaid contract were due December 3, 2012
  - The Department of Health Care Finance ("DHCF") made it clear that no new contract would be awarded to Chartered unless Chartered had a new owner and was out of rehabilitation by mid - January 2013
  - DHCF expressed increasing concerns with Chartered's performance and service levels, issuing a Corrective Action Plan/Non-Compliance letter on November 28, 2012
  - 2011 audited financials were not yet completed
  - The majority of Chartered assets are illiquid: (i) $20.0 million of accrued retrospective premiums (carried amount at 12/31/11), which DHCF contests and (ii) almost $14 million of assets are pledged as security for a loan obligation owed by Chartered's parent
  - Chartered required significant capital – estimated to be at least $30 million - to correct its risk based capital deficiency
  - Potential partners had very little time to perform due diligence on Chartered and its parent
  - Adverse publicity and speculation related to an investigation of Chartered's ultimate controlling person and related party transactions
- Chartered and the Transaction Team had limited time to identify a qualified partner and negotiate a letter of intent with the selected counterparty in advance of the December 3, 2012 bid deadline for the Medicaid contract renewal

DC Chartered Process Overview

Initial Discussions with Potential Partners / Receipt & Evaluation of Process Letter Responses

- On behalf of the Rehabilitator, KBW spoke to parties identified to KBW as having previously contacted the Rehabilitator, the Special Deputy, or the Company as well as additional parties agreed upon by the Transaction Team. KBW held discussions with 17 parties. 13 parties executed non-disclosure agreements and were provided with a process letter and Chartered's draft unaudited 2011 financial statements

- The process letter, which was distributed beginning November 9, 2012, requested additional information from potential partners including:

  - *Financing.* Potential partners were asked to outline their proposed sources of financing. It was made clear to potential counterparties that financing contingencies would not be viewed favorably and that evidence of funds sufficient to resolve the Company's RBC deficiency at the closing of a transaction would be required

  - *Expertise in the Medicaid Market.* Potential partners were asked to describe their expertise in the Medicaid managed care industry, including any existing operations serving Medicaid eligible beneficiaries

  - *DHCF RFP.* The prevailing counterparty was expected to have the expertise and resources to review and approve a mutually - agreeable response to the DHCF's request for proposal, due December 3, 2012, for award of a five year contract commencing on May 1, 2013 (the "RFP")

  - *Letter of Intent.* It was made clear that he prevailing counterparty was expected to execute a binding letter of intent prior to the Company submitting a response to the RFP, no later than December 1, 2012

- Responses to the process letter were requested by November 14, 2012. Seven responses were received by KBW. Several well capitalized strategic parties declined to participate in the process given the financial and legal condition of Chartered and the compressed timeframe in which they were required to execute a letter of intent and respond to the RFP

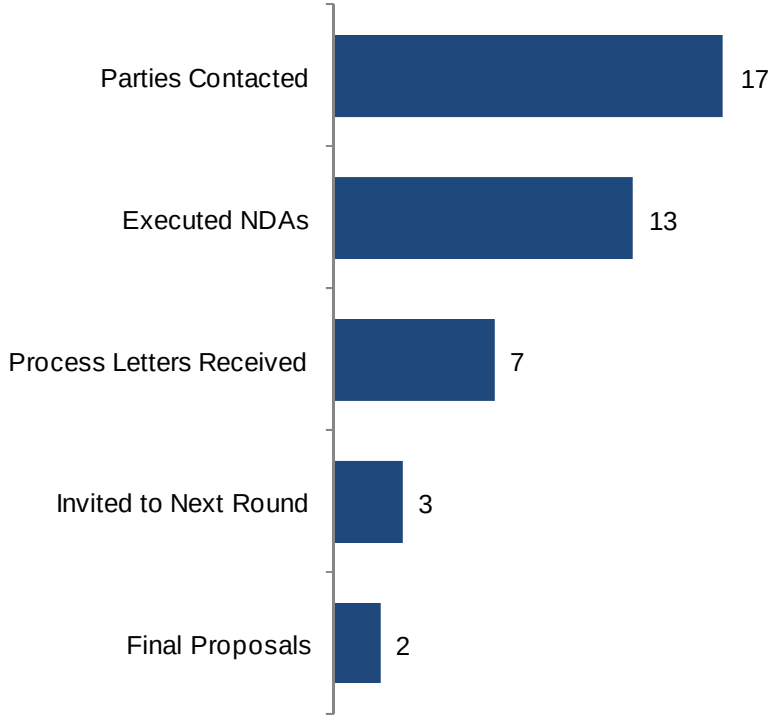
- Following a review of the responses from potential partners, three parties were invited to meet with the Company and the Transaction Team and perform additional due diligence

  - Responses were evaluated based on perceived certainty of closing, including ability to finance the transaction and the likelihood that the selected counterparty would be viewed favorably by those parties responsible for reviewing the RFP response and selecting managed care organizations for the new Medicaid contract

DC Chartered Process Overview

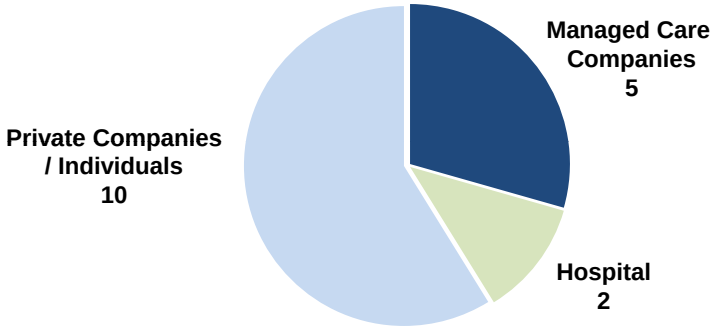
Summary of Parties Contacted

Summary of Parties Contacted

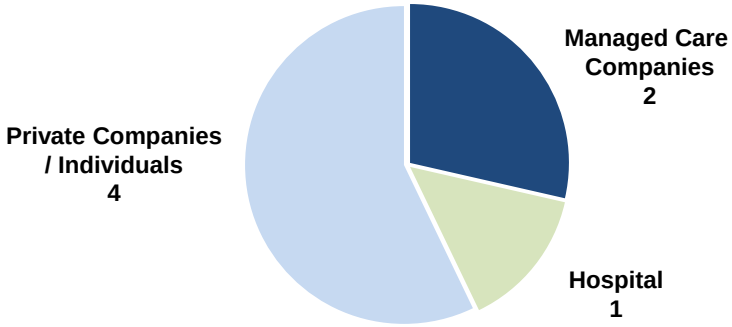


Breakdown of Parties by Type

Contacted



Responded to Process Letter



DC Chartered Process Overview

Selection of AmeriHealth

- During the course of detailed conversations and negotiations with potential partners, it became clear to the Rehabilitator and the Transaction Team that a sale of 100% of the issued share capital of the Company was unlikely given Chartered's legal and financial situation and the concerns that DHCF expressed regarding the quality of Chartered's operations. The Transaction Team viewed it to be highly unlikely that Chartered could meet DHCF's requirement that it have a new owner and be out of rehabilitation by January 2013 in order to be considered for the new Medicaid contract

- Two of the three parties that were invited to perform additional due diligence submitted indications of interest to acquire certain assets of Chartered

- The Rehabilitator determined that the best alternative for achieving value for Chartered under the circumstance was to enter into a letter of intent with AmeriHealth

  – AmeriHealth , based in Philadelphia, PA, is a leading organization of Medicaid managed care plans and related businesses in 13 states and covers nearly five million lives with over $3.0 billion in revenues(1)

  – The initial AmeriHealth proposal was further negotiated by the Transaction Team, leading to an improvement in the proposed economics

- During the week of November 26, 2012 , AmeriHealth worked with Chartered and the Transaction Team to prepare a response to the RFP. Late in the week, it was determined that the response would best be submitted by AmeriHealth rather than Chartered, using key Chartered personnel and experience

- Beginning in December the Transaction Team, Chartered and AmeriHealth and its advisors commenced negotiation of an Asset Purchase Agreement (the "APA"). The APA was executed on February 8, 2013. The APA includes the following key financial terms:

  – $5.0 million of consideration paid at closing

  – Certain transition services provided to the Chartered estate at no cost, estimated to have a value of approximately $1.0 million

(1) As of 2011

Summary of Key Transaction Terms

Consideration	$5.0 million paid at closing Certain transition services provided to Chartered by AmeriHealth at no cost
Assets Acquired	The assets acquired include (among other things) Chartered's name, other intellectual property, existing Medicaid contract and most of the Company's provider agreements
Assets Retained by Chartered	The assets retained by Chartered include (among other things) (i) the retrospective premium claims under Chartered's existing Medicaid contract, and (ii) assets pledged to Cardinal Bank pursuant to a loan transaction with Chartered's holding company
Closing Conditions	The closing conditions include (among other things) (i) the Court shall have approved the Agreement and Plan of Reorganization; (ii) AmeriHealth shall have been approved as a managed care provider pursuant to DHCF's RFP process and been allocated the enrollees currently covered by Chartered under its existing Medicaid contract; (iii) AmeriHealth shall be satisfied with the arrangements made for paying Chartered's existing provider claims; (iv) DHCF shall have approved the transfer to AmeriHealth of Chartered's existing Medicaid contract and enrollees; and (v) AmeriHealth shall have been granted a health maintenance organization license by DISB
Employees	AmeriHealth is expected to hire substantially all of Chartered's employees
Closing Date	The transaction is expected to close on or before April 1, 2013

Exhibit 3

November 30, 2012

VIA EMAIL

Jay S. Feldstein, D.O.
Regional President
AmeriHealth Mercy Health Plan
200 Stevens Drive
Philadelphia, PA 19113

Dear Dr. Feldstein:

This Letter Agreement (the "Agreement") is hereby entered into among DC Chartered Health Plan, Inc., a health maintenance organization licensed in the District of Columbia ("Chartered") and AmeriHealth Mercy Health Plan ("Mercy"), and is intended to be a binding commitment among the parties hereto.

RECITALS

A. WHEREAS, on November 1, 2012, the District of Columbia's Department of Health Care Finance ("DHCF") released a Request for Proposals ("RFP") to solicit proposals from managed care organizations that are interested in coordinating the delivery of health care services provided to District of Columbia residents through the Medicaid and Alliance programs (each such managed care organization, a "Service Provider"). The RFP will be for a new five (5) year contract period beginning May 1, 2013 (the "Contract"); and

B. WHEREAS, with Chartered's assistance, resources, assets and know-how, Mercy intends to submit a response to this RFP, and Chartered has agreed to utilize its resources, assets, and know-how in support of Mercy's application based upon Mercy's commitments made herein.

C. NOW, THEREFORE, the parties hereto, for good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

AGREEMENT

1. **Payment and Transition Services**. If Mercy or one of its affiliates is chosen as a Service Provider under the RFP and commences operations thereunder, then Mercy shall do the following:

a. On the sooner of (i) the closing of the contemplated asset purchase transaction between Mercy and Chartered (the "Asset Purchase") or (ii) within five (5) business days after Mercy begins performing services on behalf of District of Columbia residents as a Service Provider under the RFP, Mercy shall pay Five Million Dollars ($5,000,000) to Chartered in immediately available funds, wired in accordance with instructions provided by Chartered.

b. Mercy shall provide claims processing, accounting, human resources, and related transition services requested by Chartered to assist Chartered as it transitions its business to Mercy upon commencement of the new Contract.

It is understood that Mercy is under no obligation to commence such operations as a Service Provider and will not commence such services if a closing in the Asset Purchase has not occurred.

2. **Choice of Law; Jurisdiction**. This Agreement is made in and shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of laws doctrines. Mercy and Chartered irrevocably consent and submit to the exclusive jurisdiction of the applicable court within the District of Columbia for enforcement by Mercy and Chartered of this Agreement. Mercy and Chartered irrevocably waive any objection they may have to venue in the defense of an inconvenient forum to the maintenance of such actions or proceedings to enforce this Agreement.

3. **Counterparts**. This Agreement may be executed in the original, by facsimile or by any generally accepted electronic means (including transmission of a pdf file containing an executed signature page) in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

4. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors, assigns, heirs and personal representatives. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto, and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. This Agreement shall not be assignable by Mercy without the prior written consent of Chartered.

5. **Entire Agreement; Amendments**. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

If the terms and conditions set forth above are acceptable to Mercy, please sign this Letter Agreement where indicated below and return one counterpart hereof to the undersigned before the close of business on December 1, 2012.

Sincerely,

DC Chartered Health Plan, Inc.

By: Daniel L Watkins
Daniel L. Watkins,
Special Deputy Rehabilitator

Accepted and agreed on
November 30, 2012

AmeriHealth Mercy Health Plan

By: Jay S Felostein D.O
Name: JAY S FELOSTEIN
Title: REGIONAL PRESIDENT

December 1, 2012

Commissioner William P. White
Rehabilitator of DC Chartered Health Plan, Inc.
Department of Insurance, Securities and Banking
810 First Street NE, Suite 701
Washington, DC 20002

Dear Commissioner White:

This letter is in reference to the letter of intent of even date herewith (the "LOI") between AmeriHealth Mercy Health Plan ("AmeriHealth") and you regarding DC Chartered Health Plan, Inc. ("Chartered"). This is intended to clarify certain matters addressed in the LOI.

The parties understand that it is a material aspect of the transaction to AmeriHealth that the current membership of Chartered would be transferred and assigned to AmeriHealth, subject in any case to the members' right to voluntarily choose to not be so transferred, for enrollment under the managed care contracts to be awarded under the current RFP. We anticipate that this would involve an assignment of the current managed care contract between Chartered and DHCF to AmeriHealth without the assumption by AmeriHealth of liabilities under that contract for services prior to the effective date of the assignment, or other assurances and understandings with DHCF acceptable to AmeriHealth that would accomplish the goal of transferring an acceptable number of Chartered's enrollees to AmeriHealth. Accordingly, one of the assets sought to be purchased by AmeriHealth in the transaction would be the assignment of the current managed care contract with DHCF subject of course to the consent and approval of DHCF.

Very truly yours,

Jay S. Feldstein, DO
Regional President
AmeriHealth Mercy Health Plan

Have seen and agreed:

Special Deputy Rehabilitator Daniel Watkins
For William P. White, Rehabilitator

December 1, 2012

Commissioner William P. White
Rehabilitator of DC Chartered Health Plan, Inc.
Department of Insurance, Securities and Banking
810 First Street NE, Suite 701
Washington, DC 20002

Dear Commissioner White:

AmeriHealth Mercy Health Plan ("AmeriHealth") is pleased to submit the following letter of intent with respect to the transaction described below with DC Chartered Health Plan, Inc. ("Chartered").

Pursuant to an Emergency Consent Order of Rehabilitation dated October 19, 2012, the Court appointed you as the rehabilitator of Chartered. You appointed several professionals (the Receivership Team) to represent the Rehabilitator's interests. You tasked the Receivership Team to conduct a confidential process to select qualified potential counterparties.

Pursuant to your request, this letter serves as our letter of intent regarding the transaction described below. The transaction is subject to DHCF awarding one of the Medicaid managed care contracts proposed in DHCF-2013-R-0003 to AmeriHealth or its subsidiary, as well as the other terms and conditions set forth herein. We understand that the definitive transaction documents contemplated by this letter will be subject to any applicable regulatory approvals and by the Court overseeing Chartered's rehabilitation ("Rehabilitation Court").

1. *Overview of AmeriHealth and its expertise in Medicaid markets*

The AmeriHealth Family of Companies has grown to be one of the largest organizations of government-sponsored managed care and administrative services entities in the United States, touching almost five million members. AmeriHealth serves its members through five major products:

- Medicaid (including TANF, ABD, SSI and TPA)
- Duals (including D-SNPs)
- Low-Income (including SCHIP and Uninsured products)
- Behavioral Health (risk and non-risk); and
- Pharmacy Benefit Management.

Our experience uniquely positions us to partner with the District to improve health outcomes. The states in which we have served Medicaid-eligible enrollees are as diverse as our enrollee population, including: Pennsylvania, New Jersey, Kentucky, South Carolina, Indiana, Louisiana and Nebraska. Early in 2013, we will also serve members in Florida, and members enrolled in our D-SNPS in South Carolina and Pennsylvania. We also anticipate serving Medicaid members in Michigan during the first quarter of 2013.

If this transaction is subsequently approved by the Rehabilitation Court, and DHCF awards a contract to AmeriHealth, we believe that the District's Medicaid enrollees will benefit from our organizations combining managed care expertise and a local presence.

2. Proposed Transaction Structure

On November 1, 2012, the Department of Health Care Finance ("DHCF") released a Request for Proposals ("RFP") to solicit proposals from managed care companies that are interested in coordinating the delivery of health care services provided to District of Columbia residents through the Medicaid and Alliance programs. The RFP is for a new five-year contract period beginning May 1, 2013 (the "New Medicaid Contract). AmeriHealth will be the Offeror submitting its proposal to DHCF, with the assistance of Chartered, to enter into the New Medicaid Contract with the DHCF.

Chartered and AmeriHealth intend to enter into a transaction whereby AmeriHealth agrees to purchase certain assets of Chartered, specified by AmeriHealth (the "Assets"), pertaining to Chartered's business operations associated with providing health care services to Medicaid and Alliance enrollees under Chartered's contract with the DHCF (the "Transaction"). The parties intend to enter into such arrangements consistent with the following terms:

1. AmeriHealth or its designated subsidiary (the 'Operating Entity") will obtain all of the applicable licenses necessary to do business in the District and operate under the Medicaid Contract.

2. AmeriHealth will fund the Operating Entity at 200% of Risk-Based Capital.

The Transaction shall be subject to the following conditions and requirements:

- Final negotiation and execution of definitive agreements in form acceptable to the parties in their sole discretion. The parties will use their best efforts to finalize the definitive agreements within thirty (30) days of the execution of this letter of intent.

- Review and approval by the Rehabilitation Court with the terms, provisions and conditions of such approval being acceptable to each of the parties in their sole discretion.

- The entry by the Rehabilitation Court of such orders (including approval of a rehabilitation plan for Chartered) as may be required by the parties in their sole discretion.

- The effective transfer of the Assets to AmeriHealth.

3. *Request for Proposal*

AmeriHealth has drafted a response to the RFP. AmeriHealth has coordinated its response with certain members of Chartered's management team to support a smooth and efficient transition to AmeriHealth's business models. AmeriHealth's actuaries have also prepared the section of the RFP entitled Pricing Proposal. The Pricing Proposal contains proposed rates that AmeriHealth believes are actuarially sound. We understand that DHCF may ask for our Best and Final Offer for the rates. In such event, we will be willing to discuss modifications to the Pricing Proposal, but AmeriHealth will not reduce the rates to such an extent that it determines to be unacceptable. AmeriHealth will determine, in its sole discretion, as to whether any revised rates are acceptable. If AmeriHealth determines that the rates are not acceptable, AmeriHealth will not enter into the New Medicaid Contract with DHCF.

4. *Due Diligence*

AmeriHealth has met with the Receivership Team and certain members of Chartered's current management team in an expedited manner in order to reach an agreement and to file a response to the RFP. The Receivership Team and AmeriHealth will continue to work together to better understand Chartered's financial and operational condition. The proposal set forth in this letter is subject to AmeriHealth's satisfactory completion of its due diligence review of Chartered's financial and operational condition.

5. *Plans for Chartered's management and employees*

AmeriHealth places significant value on Chartered's senior management and employees, their contribution to Chartered's historical success and their importance to Chartered going forward. AmeriHealth's proposed operating structure seeks to take advantage of the Chartered's market presence and expertise, while leveraging certain efficiencies of AmeriHealth's corporate infrastructure. Accordingly, AmeriHealth expects to extend offers of employment to a substantial number of current Chartered employees.

6. *Non-Binding:*

Our proposal is a non-binding proposal regarding the interest of AmeriHealth in Chartered. Furthermore, neither AmeriHealth nor Chartered will be under any legal obligation with respect

to the transactions contemplated in this letter and no contract, agreement, commitment or any other obligation with respect to the proposed transactions or any other transaction contemplated hereby shall exist or be deemed to exist by virtue of this letter, unless and until (i) definitive transaction documents related thereto have been duly executed and delivered by duly authorized representatives of both parties and (ii) all the other conditions set forth in this letter have been satisfied. Except as Chartered and AmeriHealth otherwise expressly agree in writing, AmeriHealth may withdraw from negotiations at any time without obligation or liability to Chartered, its representatives or its affiliates and, in such event, neither AmeriHealth nor Chartered shall have any obligation whatsoever in respect of the work or transaction described herein, or any obligation to continue or resume negotiations.

7. *Choice of Law*

This letter of intent shall be interpreted and enforced in the accordance with the laws of the State of Delaware, excluding its conflicts of law principles.

Very truly yours,

Jay S. Feldstein, DO
Regional President
AmeriHealth Mercy Health Plan

Have seen and agreed:

Special Deputy Rehabilitator Daniel Watkins
For William P. White, Rehabilitator